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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/481,572 01/11/00 SHAN

J

2061-9013

HM12/0621

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EXAMINER

MELLER, M

ART UNIT

PAPER NUMBER

1651

DATE MAILED:

06/21/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/481,572

Applicant(s)

SHAN ET AL.

Examiner

Michael V. Meller

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of an extract of *Hypericum perforatum* in Paper No. 8 is acknowledged. The traversal is on the ground(s) that it is not a significant burden on the examiner to examine both Groups I and II concurrently. This is not found persuasive because applicant has cancelled the Group II claims.

The requirement is still deemed proper and is therefore made FINAL.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

Claim 3 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term, "brain aging" continues to be confusing. Everyone's brain is aging. How is this considered by applicant to be a health disorder ?

***Claim Rejections - 35 USC § 102***

Claims 1, 2, 4-17 and 22 stand rejected under 35 U.S.C. 102(b) as being anticipated by EP 847 756 for the reasons of record and for the reasons which follow.

Applicants' first argue that '756 fails to anticipate the present application because as applicants argue, infections of hepatitis viruses are not health disorders treatable with T-type calcium channel blockers.

The claims are drawn to a method of treating a health disorder treatable with a T-type calcium channel blocker. '847 teaches treating hepatitis C with an ethanol extract of *Hypericum perforatum*. Since hepatitis is a health disorder and since the extract is being administered to an animal, the extract will inherently block T-type calcium channels in an animal. Thus, the claims are anticipated.

***Claim Rejections - 35 USC § 103***

Claims 1-17 and 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over BE 654914 ('914) or DE 1692045 ('045) in view of EP 847756 ('756).

The teachings of '914 and '045 are of record. They do not teach the newly added limitation that the extract from *Hypericum perforatum* is extracted with methanol or ethanol.

Applicants state that the support for such disclosure is found at page 11, lines 20-22 of the instant specification. It also noted that applicants admit on pages 5, line 20-

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6, line 6 of the instant specification that it is well known in the art that extracts of *Hypericum* and specifically *Hypericum perforatum* are well known to be prepared by organic solvent extraction or supercritical fluid extraction by carbon dioxide and solvents such as ethanol. Further, as evidenced by EP 847756, extraction with ethanol of *Hypericum perforatum* again is documented to be routinely used in the art, see claim 6 and entire reference.

Thus, it would have been obvious to extract the *Hypericum perforatum* of '914 or '045 with ethanol or methanol since these organic solvents are well known to be used for extracting specifically, *Hypericum perforatum* as is evidenced by '756.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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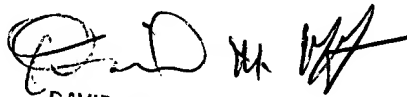
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 10:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

MVM  
June 19, 2001

  
DAVID M. NAFF  
PRIMARY EXAMINER  
ART UNIT 1651